

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2458 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

CUT FAST GRAINS LTD

Versus

NATHAALAL KHENDGARBHAI

Appearance:

MR PM THAKKAR for Petitioner

MR MC BHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 22/10/1999

ORAL JUDGEMENT

1. Learned Advocate Mr. Thakkar is appearing on behalf of the petitioner company and learned advocate Mr. M.C. Bhatt is appearing on behalf of the respondents workmen.

2. The facts of the present case is that the respondents workmen were working as workmen with the petitioner company since 1982 at Dhrol and have worked in

the petitioner company for more than 240 days in a year and their services have been terminated by the petitioner company illegally w.e.f. 30/1/85. The said termination orders were challenged by the respondents workmen before the Labour Court, Rajkot being Reference Nos. 574/86 and 575/86. Before the Labour Court, the respondents workmen have filed statement of claim in support of their dispute and the petitioner company had filed written statement vide Ex.6 and pointed out that the services of the respondents workmen have not been terminated by the company but the workmen had left their services on 13/1/85 on account of personal reasons. It was further contended by the Company that inspite of requesting in writing, the workmen have not turned-up for resuming their duty. The respondents workman were examined vide Ex. Nos. 9 and 36 before the Labour Court and one Mr. Vinodbhai Ghalabhai Chauhan was examined vide Ex.39. The petitioner company had examined Ashok Shanker Nareyat vide Ex.42 and no other witness has been examined by the petitioner company. The Labour Court, after considering the evidence, come to the conclusion that there is no reason to disbelieve the evidence of the said two workmen that they were discharged from service by the petitioner company on 30/1/85 without any reason and without any inquiry held against them for any fault. Therefore, the Labour Court has come to the conclusion that the said termination order is contrary to the provisions of Sec. 25 F of the I.D. Act and that order of termination is illegal, improper and deserves to be set aside. The Labour Court has, therefore, granted reinstatement with continuity of service w.e.f. 30/1/85 alongwith full backwages from 30/1/85 to the date of their reinstatement. The said award has been passed by the Labour Court, Rajkot on 4th January, 1989. The said award has been challenged by the petitioner company before this Court by filing this petition. In this petition rule has been issued and ad-interim relief was granted on 28th April, 1989. Before this Court Civil Application No.1093/89 was filed by the workmen for claiming benefits under Sec. 17(b) of the I.D.Act and this Court has passed order on 19/10/89 instructing to the petitioner company to deposit arrears of last drawn wages before the Labour Court and liberty was given to the workmen to withdraw the same. Therefore, earlier interim relief was accordingly stand modified and confirmed by this Court vide order dtd. 10/10/89.

3. The learned Advocate Mr. D.M. Thakkar appearing on behalf of the petitioner company has pointed out that the Labour Court has committed grave error in granting reinstatement with continuity of service and that is too

with full backwages of interim period. The case of the petitioner company has not considered by the Labour Court and also not considered the evidence of two workmen wherein gainful employment has been admitted by both the workmen in their deposition, and therefore, the Labour Court has prima facie committed error and the award passed by the Labour Court, requires to be set aside.

4. Learned Advocate Mr. M.C. Bhatt appearing on behalf of the respondents workmen has pointed out that the termination order passed by the petitioner company is contrary to Sec. 25 F of the I.D. Act, which is a fact finding arrived by the Labour Court and this Court cannot reappreciate the said finding of fact and Labour Court has not committed any error while coming to the conclusion. The gainful employment which has been earned by the respondents workmen is not complete amount which was received by the workmen while working with the petitioner company, therefore, the same cannot be considered as a gainful employment.

5. I have considered the submission of both the Advocates, oral evidence of both the respondents workmen, Nathabhai Khengarbhai Ex.9, Babubhai Rajabhai Ex.36 which have been produced in this petition. At Ex.9 the workman Nathabhai Khengarbhai has admitted that he is having six member in his family and he has responsibility to maintain his family and for maintaining family daily Rs.15/- is required and I am earning the said amount by way of gainful employment. Similarly, workman Babubhai Rajabhai is examined at Ex.36 and in his deposition he has admitted that he was working at Dhrol Taluka and receiving wages about 60% in cash and 40% in kind. The said 60% in cash comes to Rs.11/- per day and the said scheme is closed from one last month and from one last month, I was not working. The said evidence was given by the workman on 1/9/87. The submission of Mr. D.M. Thakkar, considering the evidence of two workmen is required to be considered in light of the facts that some extent the workers have admitted gainful employment of the interim period. The labour Court, while granting full backwages, the said evidence has not been considered and the Labour Court has granted full backwages of interim period from the date of termination. In respect to the finding, the termination order is contrary to Sec.25 F of the I.D. Act the Labour Court has discussed the evidence and appreciated the evidence and facts which were on record and come to such finding of fact, therefore, the said finding cannot be disturbed while exercising power under Articles 226 and 227 of the Constitution of India and therefore, the termination

order which has been found illegal and violative of Sec. 25 F of the I.D. Act and subsequent to that relief of reinstatement with continuity in service which has been granted by the Labour Court is not required to be disturbed and no interference is required. But so far as the relief of backwages is concerned, considering the evidence of workmen at Ex. 9 and 36, I am of the view that if, instead of full backwages, 50% backwages is granted for the intervening period, then ends of justice would be met, and therefore, accordingly considering the evidence of respondents workmen, I am of the view that the direction of the Labour Court granting full backwages is required to be quashed and set aside and instead of that 50% of backwages for the interim period is granted and therefore, the award passed by the Labour Court is required to be modified to that extent only. The order of termination passed by the petitioner company against the respondents workmen are quashed and set aside and petitioner company is directed to reinstate both the respondents workmen with continuity of service and with 50% of backwages for interim period. The award passed by the Labour Court stands modified to that extent only and rule is made absolute to that extent. The petition is partly allowed, in above extent. In the said petition, the said award is modified and confirmed the reinstatement with continuity of service and with 50% backwages of intervening period, therefore, considering the fact that being old matter of 1989 and ad-interim order has been passed by this Court, staying operation of the award passed by the Labour Court in the larger interest of justice, I am of the view that if some direction has been issued to implement the said modified award, will meet the ends of justice and therefore, It is directed to the petitioner company to reinstate the respondents workmen with continuity of service and with 50% backwages of intervening period from 30/1/85 to the date of reinstatement of the respondents workmen within period of three months from the date of receiving certified copy of the said award.

Rule is made absolute to that extent.

Ad-interim relief which has been granted earlier stands vacated. No order as to costs.

Sd/-

Date : 22/10/99. (H.K. Rathod, J.)

Rafik*